

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/971,946 Confirmation No. 4092
Applicant : Jean-Patrick Azpitarte
Filed : October 4, 2001
TC/A.U. : 2152
Examiner : Dohm Chankong

Docket No. : 01-600
Customer No. : 34704

DECLARATION

I, MICHELE O'TOOLE, hereby declare that:

1. I have been asked to give an opinion in support of the non-obviousness and patentability of the invention set forth in the claims of U.S. Patent Application No. 09/971,946, entitled SYSTEM FOR REMOTELY MANAGING MAINTENANCE OF A SET OF FACILITIES by Jean-Patrick Azpitarte (the "Azpitarte Application");
2. I am currently President of J. Martin Associates, Inc. of Mahwah, New Jersey;
3. I have a B.A. from the College of St. Elizabeth and an M.B.A. from the New Jersey Institute of Technology;
4. I have over 30 years experience in the Vertical Transportation Industry including holding various positions in management at Otis Elevator Company. My responsibilities include, and have included, field installation of new escalators and elevators, field surveys and analysis of existing escalators and elevators, determination of operating efficiencies, development of scope requirements, preparation and writing of

specifications, selling, coordination and implementation of numerous major modernization projects, review of system maintenance and preparation of repair and maintenance proposals and contracts, supervision of construction documents, design of new vertical transportation systems with projected traffic analysis, cost estimates, shop drawing review and related work requirements with other trades, prevailing code, life safety and handicapped requirements, and restoration of all escalator and elevator systems at the World Trade Center in 1993;

5. I am an ASME/ANSI qualified elevator supervisor, an ASME/ANSI qualified elevator inspector, an approved elevator inspector for the City of New York, and a New Jersey State Certified EMT/D. I am also a member of the following organizations: the National Association of Elevator Contractors, the National Association of Elevator Safety Authorities, the National Association of Vertical Transportation Professionals, the New Jersey Association of Women Business Owners, Inc., the Building Owners and Managers Association of New York, and Professional Women in Construction;

6. I have reviewed the following documents: U.S. Patent Publication No. 2002/0059412 to Jean-Patrick Azpitarte; claims 13 and 15 - 25 from the amendment dated April 20, 2006 filed in the Azpitarte Application; the office action mailed March 17, 2008; and U.S. Patent Publication No. 2003/0172002 to Spira et al.;

7. The elevator industry is unique in that it is a life safety issue for all clients. The objective of major

elevator manufacturers and maintenance companies has always been safety and reliability. However, it has also always been on "their" terms and conditions, therefore putting the customer at a significant disadvantage. Today's customer has become much more informed and wants to manage as opposed to being managed;

8. One major difference between the invention set forth in claims 13 and 15 - 25 of the Azpitarte application and the Spira et al. application is that the Azpitarte' invention as set forth in said claims assures real time management of specific functions whereas the Spira application does not disclose a system which provides real time management of specific functions. The Spira et al. application is broad based with a "how to manual." The invention described and claimed in claims 13 and 15 - 25 of the Azpitarte Application does not teach an elevator company how to perform their job nor provide them with technical support. Rather, the invention set forth in claims 13 and 15 - 25 of the Azpitarte Application confirms that what was agreed upon in the contract is fulfilled. The system disclosed and claimed in claims 13 and 15 - 25 of the Azpitarte Application is not generic, it is customized to each specific client;

9. The system and method described and claimed in claims 13 and 15 - 25 of the Azpitarte Application is a key management tool for the customer ensuring accountability from the contractor with guaranteed performance. Although some may consider it "penalty driven," those penalties are agreed upon by all parties and are incorporated into the contract. The specifics are geared to customer

requirements and can be adjusted as requested based on history of a certain failure or a customer request. The industry goal is zero callbacks and this partnership among the client, contractor, and the Azpitarte system and method as set forth in the claims in the Azpitarte Application provides a much greater opportunity to meet that goal. In my opinion, the system described in the Spira et al. application is not the same as that disclosed and claimed in the Azpitarte Application. Further, in my opinion, the Spira et al. application does not render obvious the Azpitarte system and method which is claimed in claims 13 and 15 - 25 of the Azpitarte Application. The Spira et al. system set forth in the Spira et al. application may detect a problem; however, it will not necessarily ensure and confirm that it is corrected. In my opinion, the Spira et al. application is directed to an inferior system and method;

10. J. Martin Associates has over 150 years of combined industry experience and has not seen a product that provides the features set forth in the system and method set forth in claims 13 and 15 - 25 in the Azpitarte Application;

11. We at J. Martin Associates eagerly await the opportunity to provide our clients with the system and method set forth in claims 13 and 15 - 25 in the Azpitarte Application and has had a very positive response to our presentation of same.

The undersigned declares further that all statements made herein of their own knowledge are true and that all

statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing therefrom.


Michele O'Toole

Date: 7/15/08